



DEPARTMENT OF JUSTICE  
Antitrust Division

United States v. Iron Mountain Inc. and Recall Holdings Ltd.;

Proposed Final Judgment and Competitive Impact Statement

Notice is hereby given pursuant to the Antitrust Procedures and Penalties Act, 15 U.S.C. 16(b)-(h), that a proposed Final Judgment, Stipulation, and Competitive Impact Statement have been filed with the United States District Court for the District of Columbia in United States of America v. Iron Mountain Inc. and Recall Holdings Ltd., Civil Action No. 1:16-cv-00595. On March 31, 2016, the United States filed a Complaint alleging that Iron Mountain's proposed acquisition of Recall would violate Section 7 of the Clayton Act, 15 U.S.C. 18. The proposed Final Judgment, filed at the same time as the Complaint, requires Iron Mountain to divest Recall records management assets in fifteen metropolitan areas.

Copies of the Complaint, proposed Final Judgment, and Competitive Impact Statement are available for inspection on the Antitrust Division's website at <http://www.justice.gov/atr> and at the Office of the Clerk of the United States District Court for the District of Columbia. Copies of these materials may be obtained from the Antitrust Division upon request and payment of the copying fee set by Department of Justice regulations.

Public comment is invited within 60 days of the date of this notice. Such comments, including the name of the submitter, and responses thereto, will be posted on the Antitrust Division's website, filed with the Court, and, under certain circumstances, published in the Federal Register. Comments should be directed to Maribeth Petrizzi, Chief, Litigation II Section, Antitrust Division, U.S. Department of Justice, 450 5<sup>th</sup> Street, N.W., Suite 8700, Washington, D.C. 20530 (telephone: (202) 307-0924).

\_\_\_\_\_/s/\_\_\_\_\_  
Patricia A. Brink  
Director of Civil Enforcement

**UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLUMBIA**

UNITED STATES OF AMERICA,  
U.S. Department of Justice  
Antitrust Division  
450 Fifth Street, NW, Suite 7100  
Washington, DC 20530

*Plaintiff,*

v.

IRON MOUNTAIN INC.,  
One Federal Street  
Boston, MA 02110

and

RECALL HOLDINGS LTD.  
697 Gardeners Road  
Alexandria, Sydney  
Australia

*Defendants.*

CASE NO.: 1:16-cv-00595

JUDGE: Amit P. Mehta

FILED: 03/31/2016

**COMPLAINT**

The United States of America, acting under the direction of the Attorney General of the United States, brings this civil action to enjoin the proposed acquisition by Defendant Iron Mountain Incorporated (“Iron Mountain”) of Defendant Recall Holdings Limited (“Recall”). The United States alleges as follows:

**I. NATURE OF THE ACTION**

1. Iron Mountain and Recall are the two largest providers of hard-copy records management services (“RMS”) in the United States and compete directly to serve RMS

customers in numerous geographic areas. RMS are utilized by a wide array of businesses that for legal, business, or other reasons have a need to store and manage substantial volumes of hard copy records for significant periods of time.

2. In 15 metropolitan areas located throughout the United States, Iron Mountain and Recall are either the only significant providers of RMS, or two of only a few significant providers. In these 15 metropolitan areas—Detroit, Michigan; Kansas City, Missouri; Charlotte, North Carolina; Durham, North Carolina; Raleigh, North Carolina; Buffalo, New York; Tulsa, Oklahoma; Pittsburgh, Pennsylvania; Greenville/Spartanburg, South Carolina; Nashville, Tennessee; San Antonio, Texas; Richmond, Virginia; San Diego, California; Atlanta, Georgia; and Seattle, Washington—Iron Mountain and Recall have competed aggressively against one another for customers, resulting in lower prices for RMS and higher quality service. Iron Mountain's acquisition of Recall would eliminate this vigorous competition and the benefits it has delivered to RMS customers in each of these metropolitan areas.

3. Accordingly, Iron Mountain's acquisition of Recall likely would substantially lessen competition in the provision of RMS in these 15 metropolitan areas in violation of Section 7 of the Clayton Act, 15 U.S.C. § 18, and should be enjoined.

## **II. JURISDICTION, VENUE, AND INTERSTATE COMMERCE**

4. The United States brings this action under Section 15 of the Clayton Act, 15 U.S.C. § 25, as amended, to prevent and restrain the violation by Defendants of Section 7 of the Clayton Act, 15 U.S.C. § 18.

5. This Court has subject matter jurisdiction over this action pursuant to Section 15 of the Clayton Act, 15 U.S.C. § 25, and 28 U.S.C. §§ 1331, 1337(a), and 1345. In their RMS

businesses, Iron Mountain and Recall each make sales and purchases in interstate commerce, ship records in the flow of interstate commerce, and engage in activities substantially affecting interstate commerce.

6. Defendants Iron Mountain and Recall transact business in the District of Columbia and have consented to venue and personal jurisdiction in this District. This Court has personal jurisdiction over each Defendant and venue is proper in this District under Section 12 of the Clayton Act, 15 U.S.C. § 22, and 28 U.S.C. § 1391(c).

### **III. THE DEFENDANTS AND THE TRANSACTION**

7. Iron Mountain is a Delaware corporation headquartered in Boston, Massachusetts. Iron Mountain is the largest RMS company in the United States, providing document storage and related services throughout the nation. For fiscal year 2014, Iron Mountain reported worldwide revenues of approximately \$3.1 billion.

8. Recall is an Australian company headquartered in Norcross, Georgia. Recall is the second-largest RMS company in the United States and provides document storage and related services throughout the nation. Recall's worldwide revenues for 2014 were approximately \$836.1 million.

9. On June 8, 2015, Iron Mountain and Recall entered into a Scheme Implementation Deed by which Iron Mountain proposes to acquire Recall for approximately \$2.6 billion in cash and stock, subject to adjustments.

#### **IV. TRADE AND COMMERCE**

##### **A. Relevant Service Market: Records Management Services**

10. For a variety of legal and business reasons, companies must often retain hard-copy records for significant periods of time. Given the physical space required to store any substantial volume of records and the effort required to manage stored records, many customers contract with RMS vendors such as Iron Mountain and Recall to provide these services.

11. RMS vendors pick up records from customers and bring them to a secure off-site facility, where they then index the records to allow their customers to keep track of them. RMS vendors retrieve stored records for their customers upon request and often perform other services related to the storage, tracking, and shipping of records. For example, they sometimes destroy stored records on behalf of the customer once preservation no longer is required.

12. Customers that purchase RMS range from Fortune 500 companies to small firms that have a need to manage and store records. Customers include corporations with business records maintenance requirements, healthcare providers with patient records, and other companies that may wish to manage and store other types of records, such as case files, employee records, and other information.

13. RMS procurements are typically made by competitive bid. Contracts usually specify fees for each service provided (*e.g.*, pickup, monthly storage, retrieval, delivery, and transportation). Most customers purchase RMS in only one city. Some customers with operations in multiple cities prefer to purchase RMS from a single vendor pursuant to a single contract; other multi-city customers disaggregate their contracts and purchase RMS from different vendors in different cities.

14. For companies with a significant volume of records, in-house storage is generally not a viable substitute for RMS. For a company to manage its records in-house, it must have a substantial amount of unused space, racking equipment, security features, and one or more dedicated employees. Similarly, entirely replacing RMS with digital records management services is generally not feasible. To switch from physical to electronic records, a customer would need to fundamentally shift its method of creating, using, and storing records and adapt to an entirely paperless system. For many customers, the time, expense, and other burdens associated with doing so are prohibitive.

15. For these reasons, a hypothetical monopolist of RMS could profitably increase its prices by at least a small but significant non-transitory amount. Accordingly, RMS constitutes a relevant product market and line of commerce for purposes of analyzing the likely competitive effects of the proposed acquisition under Section 7 of the Clayton Act, 15 U.S.C. § 18.

**B. Relevant Geographic Markets**

16. The geographic market for RMS consists of a metropolitan area or a radius around a metropolitan area. Customers generally require a potential RMS vendor to have a storage facility located within a certain proximity to the customer's location. Customers generally will not consider vendors located outside a particular radius, because the vendor will not be able to retrieve and deliver records on a timely basis. The radius a customer is willing to consider is usually measured in time, rather than miles, as the retrieval of records may be a time-sensitive matter. Transportation costs also likely render a distant RMS vendor uncompetitive with vendors located closer to the customer.

17. RMS vendors in the following 15 metropolitan areas—Detroit, Michigan; Kansas City, Missouri; Charlotte, North Carolina; Durham, North Carolina; Raleigh, North Carolina; Buffalo, New York; Tulsa, Oklahoma; Pittsburgh, Pennsylvania; Greenville/Spartanburg, South Carolina; Nashville, Tennessee; San Antonio, Texas; Richmond, Virginia; San Diego, California; Atlanta, Georgia; and Seattle, Washington—could profitably increase prices to local customers without losing significant sales to more distant competitors. As a result, a hypothetical monopolist of RMS in each of these 15 metropolitan areas could profitably increase its prices by at least a small but significant non-transitory amount. Accordingly, each of these areas is a relevant geographic market for the purposes of analyzing the competitive effects of the acquisition under Section 7 of the Clayton Act, 15 U.S.C. § 18.

**C. Anticompetitive Effects of the Proposed Acquisition**

18. Iron Mountain and Recall are the two largest RMS providers in the United States and directly compete to provide RMS in each relevant geographic market. Each relevant geographic market for the provision of RMS is highly concentrated. In each of the relevant geographic markets, Iron Mountain is the largest RMS provider and Recall is either the second or third-largest competitor, while few, if any, other significant competitors exist. Iron Mountain and Recall compete very closely for accounts, target one another's customers, and, in most of the relevant geographic markets, view one another as the other's most formidable competitor. The resulting significant increase in concentration in each metropolitan area and loss of head-to-head competition between Iron Mountain and Recall likely will result in higher prices and lower quality service for RMS customers in each relevant geographic market.

**D. Entry into the Market for RMS**

19. It is unlikely that entry or expansion into the provision of RMS in the relevant geographic markets alleged herein would be timely, likely, or sufficient to defeat the likely anticompetitive effects of the proposed acquisition.

20. Any new RMS entrant would be required to expend significant time and capital to successfully enter any of the relevant geographic markets. RMS entry into a new geographic market generally requires a secure facility, racking equipment, delivery trucks, tracking software, and employees. In addition, a new entrant would have to expend substantial effort to build a reputation for dependable service, which is important to RMS customers who demand quick and reliable pickup of and access to their stored records.

21. In order to recoup the costs of entry, an RMS vendor must fill a substantial amount of its facility's capacity. However, acquiring customers from existing RMS vendors in order to fill this capacity is often complicated by provisions in the customers' contracts requiring payment of permanent withdrawal fees if the customer permanently removes a box or record from storage. Customers will sometimes pay these withdrawal fees themselves, but more commonly, the new vendor will have to offer to pay the fees to induce the customer to switch. The vendor must then recoup the cost of the fees by imposing its own permanent withdrawal fees, amortizing the cost over a longer contract, or charging higher prices while still charging a competitive price for its services. Customer contracts also often impose a cap on the number of boxes per month that a customer may permanently remove from a RMS vendor's facility, such that a switch to a new RMS vendor may take several months to complete. Taken together,

permanent withdrawal fees and other withdrawal restrictions make it difficult for a new RMS entrant to win customers away from existing RMS vendors.

22. Likewise the permanent withdrawal fees and other withdrawal restrictions also make it more difficult for an RMS vendor already in a market to win enough customers away from competitors to expand significantly.

## **V. VIOLATION ALLEGED**

23. The United States hereby incorporates paragraphs 1 through 22 above.

24. The proposed acquisition of Recall by Iron Mountain likely would substantially lessen competition for RMS in the 15 relevant geographic markets identified above in violation of Section 7 of the Clayton Act, 15 U.S.C. § 18. Unless enjoined, the proposed acquisition likely would have the following anticompetitive effects relating to RMS in the relevant geographic markets, among others:

- (a) actual and potential competition between Iron Mountain and Recall for RMS in each relevant geographic market will be eliminated;
- (b) competition generally for RMS in each relevant geographic market will be substantially lessened; and
- (c) prices for RMS will likely increase and the quality of service will likely decrease in each relevant geographic market.

## **VI. REQUESTED RELIEF**

25. The United States requests that this Court:

- (a) adjudge and decree that Iron Mountain's acquisition of Recall would be unlawful and violate Section 7 of the Clayton Act, 15 U.S.C. § 18;

(b) permanently enjoin and restrain Defendants and all persons acting on their behalf from consummating the proposed acquisition of Recall by Iron Mountain, or from entering into or carrying out any other contract, agreement, plan or understanding, the effect of which would be to combine Iron Mountain with Recall;

(c) award the United States the cost for this action; and

(d) award the United States such other and further relief as the Court deems just and proper.

Dated: March 31, 2016

Respectfully submitted,

FOR PLAINTIFF UNITED STATES OF AMERICA:

/s/  
 WILLIAM J. BAER (D.C. BAR #324723)  
 Assistant Attorney General for Antitrust

/s/  
 RENATA B. HESSE (D.C. BAR #466107)  
 Deputy Assistant Attorney General

/s/  
 PATRICIA A. BRINK  
 Director of Civil Enforcement

/s/  
 JAMES J. TIERNEY (D.C. Bar # 434610)  
 Chief, Networks & Technology  
 Enforcement Section

/s/  
 MATTHEW C. HAMMOND  
 AARON D. HOAG  
 Assistant Chiefs, Networks & Technology  
 Enforcement Section

/s/  
 SOYOUNG CHOE\*  
 VITTORIO COTTAFAVI  
 ZACHARY GOODWIN  
 STEPHEN HARRIS  
 DANIELLE HAUCK  
 JENNIFER WAMSLEY (D.C. BAR  
 #486540)  
 Trial Attorneys

United States Department of Justice  
 Antitrust Division  
 Networks & Technology Enforcement  
 Section  
 450 Fifth Street, N.W., Suite 7100  
 Washington, DC 20530  
 Phone: (202) 598-2436  
 Facsimile: (202) 514-903  
 E-mail: soyoung.choe@usdoj.gov  
 \*Attorney of Record

**UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLUMBIA**

UNITED STATES OF AMERICA,

*Plaintiff,*

v.

IRON MOUNTAIN INC.,

and

RECALL HOLDINGS LTD.

*Defendants.*

CASE NO.: 1:16-cv-00595

JUDGE: Amit P. Mehta

FILED: 03/31/2016

**COMPETITIVE IMPACT STATEMENT**

Plaintiff United States of America (“United States”), pursuant to Section 2(b) of the Antitrust Procedures and Penalties Act (“APPA” or “Tunney Act”), 15 U.S.C. § 16(b)-(h), files this Competitive Impact Statement relating to the proposed Final Judgment submitted for entry in this civil antitrust proceeding.

**I. NATURE AND PURPOSE OF THE PROCEEDING**

On June 8, 2015, Iron Mountain Inc. (“Iron Mountain”) reached an agreement to acquire all of the outstanding shares of Defendant Recall Holdings Ltd. (“Recall”) in a transaction valued at approximately \$2.6 billion. The United States filed a civil antitrust Complaint on March 31, 2016, seeking to enjoin the proposed acquisition. The Complaint alleges that the likely effect of the acquisition would be to lessen competition substantially for the provision of hard-copy records management services (“RMS”) in violation of Section 7 of the Clayton Act, 15 U.S.C. §

18, in the following fifteen metropolitan areas: Detroit, Michigan; Kansas City, Missouri; Charlotte, North Carolina; Durham, North Carolina; Raleigh, North Carolina; Buffalo, New York; Tulsa, Oklahoma; Pittsburgh, Pennsylvania; Greenville/Spartanburg, South Carolina; Nashville, Tennessee; San Antonio, Texas; Richmond, Virginia; San Diego, California; Atlanta, Georgia; and Seattle, Washington. This loss of competition likely would result in consumers paying higher prices for RMS and receiving inferior service in these areas.

At the same time the Complaint was filed, the United States also filed a Hold Separate Stipulation and Order (“Hold Separate”) and proposed Final Judgment, which are designed to eliminate the anticompetitive effects of the acquisition. Under the proposed Final Judgment, which is explained more fully below, Defendants are required to divest specified RMS assets in each of the 15 metropolitan areas of concern. Under the terms of the Hold Separate, Defendants will take certain steps to ensure that the assets are operated as competitively independent, economically viable, and ongoing business concerns that will remain independent and uninfluenced by the consummation of the acquisition, and that competition is maintained during the pendency of the ordered divestitures.

The United States and Defendants have stipulated that the proposed Final Judgment may be entered after compliance with the APPA. Entry of the proposed Final Judgment would terminate this action, except that the Court would retain jurisdiction to construe, modify, or enforce the provisions of the proposed Final Judgment and to punish violations thereof.

## **II. DESCRIPTION OF THE EVENTS GIVING RISE TO THE ALLEGED VIOLATION**

### *A. The Defendants and the Proposed Transaction*

Iron Mountain is a Delaware corporation headquartered in Boston, Massachusetts. Iron Mountain is the largest RMS company in the United States, providing document storage and related services throughout the nation. For fiscal year 2014, Iron Mountain reported worldwide revenues of approximately \$3.1 billion.

Recall is an Australian company headquartered in Norcross, Georgia. Recall is the second-largest RMS company in the United States and provides document storage and related services throughout the nation. Recall's worldwide revenues for 2014 were approximately \$836.1 million.

On June 8, 2015, Iron Mountain and Recall entered into an agreement pursuant to which Iron Mountain proposes to acquire Recall for approximately \$2.6 billion in cash and stock, subject to adjustments.

The proposed transaction, as initially agreed to by Defendants, would lessen competition substantially in the provision of RMS in the relevant markets. This acquisition is the subject of the Complaint and proposed Final Judgment filed by the United States on March 31, 2016.

### *B. The Competitive Effects of the Transaction*

#### **1. The Relevant Service Market**

The Complaint alleges that RMS constitute a relevant product market and line of commerce within the meaning of Section 7 of the Clayton Act, 15 U.S.C. § 18. For a variety of legal and business reasons, companies frequently must keep hard-copy records for significant periods of time. Given the physical space required to store any substantial volume of records

and the effort required to manage stored records, many customers contract with RMS vendors such as Iron Mountain and Recall to provide these services.

RMS vendors typically pick up records from customers and bring them to a secure off-site facility, where they then index the records to allow their customers to keep track of them. RMS vendors retrieve stored records for their customers upon request and often perform other services related to the storage, tracking, and shipping of records. For example, they sometimes destroy stored records on behalf of the customer once preservation is no longer required.

Customers of RMS include Fortune 500 firms, as well as local businesses throughout the United States. Customers often procure RMS by competitive bid and contracts usually specify fees for each service provided (*e.g.*, pickup, monthly storage, retrieval, delivery, and transportation). Most customers purchase RMS in only one city. Some customers with operations in multiple cities prefer to purchase RMS from a single vendor pursuant to a single contract; other multi-city customers disaggregate their contracts and purchase RMS from different vendors in different cities.

The Complaint alleges for companies with a significant volumet of records, in-house storage is generally not a viable substitute for RMS. For a company to manage its records in-house, it must have a substantial amount of unused space, racking equipment, security features, and one or more dedicated employees. Similarly, entirely replacing RMS with digital records management services is generally not feasible. To switch from physical to electronic records, a customer would need to fundamentally shift its method of creating, using and storing records and adopt an entirely paperless system.

For these reasons, the Complaint alleges that a hypothetical monopolist of RMS could profitably increase its prices by at least a small but significant non-transitory amount. In the event of a small but significant increase in price for RMS, customers would not switch to any other alternative. Thus, the Complaint alleges that the provision of RMS constitutes a relevant service market for purposes of analyzing the effects of the transaction.

## 2. Relevant Geographic Markets

The geographic market for RMS consists of a metropolitan area or a radius around a metropolitan area. Customers generally require a potential RMS vendor to have a storage facility located within a certain proximity to the customer's location. Customers generally will not consider vendors located outside a particular radius, because the vendor will not be able to retrieve and deliver records on a timely basis. The radius a customer is willing to consider is usually measured in time, rather than miles, as the retrieval of records may be a time-sensitive matter. Transportation costs also likely render a distant RMS vendor uncompetitive with vendors located closer to the customer.

In each of the metropolitan areas identified in the Complaint, a hypothetical monopolist RMS firm could profitably increase prices to local customers without losing significant sales to more distant competitors. Accordingly, each of these metropolitan areas is a relevant geographic market for the purposes of analyzing the competitive effects of the acquisition under Section 7 of the Clayton Act, 15 U.S.C. § 18.

## 3. Anticompetitive Effects of the Proposed Acquisition

As alleged in the Complaint, Iron Mountain and Recall are the two largest RMS providers in the United States and the only significant RMS providers, or two of only a few

significant RMS providers, in each of the relevant geographic markets. In each of the geographic markets, Iron Mountain is the largest RMS provider, Recall is the second- or third-largest RMS competitor, and the market is highly concentrated. In each of these markets, Iron Mountain and Recall directly compete with one another to provide RMS, resulting in lower prices and better quality service for RMS customers. According to the Complaint, the significant increase in concentration and loss of head-to-head competition that will result from the proposed acquisition will likely cause prices for RMS to increase and the quality of RMS services to decline in each relevant market.

#### 4. Difficulty of Entry

According to the Complaint, it is unlikely that entry or expansion into the provision of RMS in the relevant geographic markets would be timely, likely, or sufficient to defeat the likely anticompetitive effects of the proposed acquisition.

Any new RMS entrant would be required to expend significant time and capital to successfully enter any of the relevant markets. Entry into a new geographic market requires a secure facility, racking equipment, delivery trucks, tracking software, and employees. In addition, a new entrant would have to expend substantial effort to build a reputation for dependable service, which is important to RMS customers who demand quick and reliable pickup of and access to their stored records. In order to recoup the costs of entry, an RMS vendor must fill a substantial amount of its facility's capacity. However, acquiring customers from existing RMS vendors in order to fill this capacity is often complicated by provisions in the customers' contracts requiring payment of permanent withdrawal fees if the customer permanently removes a box or record from storage. Customers will sometimes pay these

withdrawal fees themselves, but more commonly, the new vendor will have to offer to pay the fees to induce the customer to switch. The vendor must then recoup the cost of the fees by amortizing the cost over a longer contract, or charging higher prices while still charging a competitive price for its services. Contracts often impose a cap on the number of boxes per month that a customer may permanently remove from a RMS vendor's facility, such that a switch to a new RMS vendor may take several months or more to complete. Taken together, permanent withdrawal fees and other withdrawal restrictions make it difficult for a new RMS entrant to win customers away from existing RMS vendors.

Such fees and withdrawal restrictions also make it more difficult for existing RMS vendors to expand significantly. For all of these reasons, the Complaint alleges that new entry or expansion by existing firms is unlikely to remedy the anticompetitive effects of the proposed acquisition.

### **III. EXPLANATION OF THE PROPOSED FINAL JUDGMENT**

#### ***A. Divestitures***

The divestitures required by the proposed Final Judgment will eliminate the anticompetitive effects of the acquisition by establishing independent and economically viable competitors in the provision of RMS in each of the relevant geographic markets.

The proposed Final Judgment requires Defendants to divest, as viable ongoing business concerns, Recall RMS assets in all fifteen geographic markets identified in the Complaint (collectively, the "Divestiture Assets"). The Divestiture Assets include specified Recall records management facilities in these areas along with all tangible and intangible assets used in the operation of the records management businesses associated with these facilities. In each of the

geographic markets other than Atlanta, Defendants are divesting all of Recall's RMS assets. In Atlanta, Defendants are divesting most, but not all, of Recall's RMS facilities because the facilities to be divested are sufficient to serve all of Recall's local customers in Atlanta and to compete for new business in the area.

Section IV.A of the proposed Final Judgment requires Defendants, within 10 calendar days after consummation of the transaction sought to be enjoined by the Complaint, to divest RMS assets in thirteen of the fifteen geographic markets to Access CIG, LLC ("Access"). Access is an established player in the RMS industry and is currently the third-largest RMS provider in the United States. In addition to preserving competition in each of the thirteen geographic markets, the divestitures, when combined with Access's existing operations, will enable Access to offer RMS in all of the metropolitan areas that Recall currently offers RMS. Access will be acquiring the Divestiture Assets in Detroit, Kansas City, Charlotte, Durham, Raleigh, Buffalo, Tulsa, Pittsburgh, Greenville/Spartanburg, Nashville, San Antonio, Richmond, and San Diego. If, for some reason, Defendants are unable to complete the divestitures to Access, they must sell the Divestiture Assets to an alternative purchaser approved by the United States.

Section IV.B of the proposed Final Judgment requires Defendants, within ninety days after consummation of the transaction sought to be enjoined by the Complaint, or five days after notice of the entry of the Final Judgment by the Court, whichever is later, to divest specified RMS assets as viable ongoing businesses in the remaining two geographic markets. In these two geographic areas—Atlanta and Seattle—Access is already a significant RMS provider, and thus a divestiture to Access would not restore the competition lost through the proposed acquisition.

Pursuant to Section IV.L, Defendants must divest the Divestiture Assets in such a way as to satisfy the United States in its sole discretion that the assets can and will be operated by the purchasers as viable, ongoing records management businesses that can compete effectively in the relevant markets. Defendants must take all reasonable steps necessary to accomplish the divestitures required by Sections IV.A and IV.B quickly and shall cooperate with prospective purchasers.

In the event that the Defendants do not accomplish all of the divestitures within the periods prescribed in the proposed Final Judgment, Section V provides that the Court will appoint a trustee selected by the United States to effect the divestiture of any remaining Divestiture Assets. If a trustee is appointed, Section V provides that Defendants will pay all costs and expenses of the trustee. The trustee's commission will be structured so as to provide an incentive for the trustee based on the price obtained and the speed with which the divestitures are accomplished. After his or her appointment becomes effective, the trustee will file monthly reports with the Court and the United States setting forth his or her efforts to accomplish the divestiture. At the end of six months, if the divestitures have not been accomplished, the trustee and the United States will make recommendations to the Court, which shall enter such orders as appropriate, in order to carry out the purpose of the trust, including extending the trust or the term of the trustee's appointment.

*C. Other Divestiture-Related Provisions*

Section IV.I of the proposed Final Judgment gives the purchasers of the Divested Assets the right to require the Defendants to provide certain transition services pursuant to a transition services agreement. This provision is designed to ensure the smooth operation of the divested

assets during the first six months after the sale of the Divestiture Assets.

Section IV.J of the proposed Final Judgment is designed to help ensure that the purchasers of the Divestiture Assets can compete to provide RMS to customers that are served by both divested records management facilities and records management facilities that are being retained by Defendants. These customers are defined as Split Multi-City Customers in Section II.L. Section IV.J of the proposed Final Judgment requires Defendants to allow any Split Multi-City Customer to terminate or otherwise modify its contract with Defendants so as to enable the customer to transfer records to the purchaser(s) of the Divestiture Assets without paying permanent withdrawal fees, retrieval fees, or other fees associated with transferring such customer's records from a Recall records management facility that would otherwise be required under the customer's contract with Defendants. If a Split Multi-City Customer chooses to exercise this provision, it will only be required to pay Defendants the costs associated with transporting the records from Defendants' RMS facilities to the new facility, and the costs associated with reshelving the records at the new facility, if such customer requests such services from the Defendants. All Split Multi-City Customers will be informed of their rights under Section IV.J by letter as specified in Section IV.K of the proposed Final Judgment.

D. *Notification of Future Acquisitions*

Section XI of the proposed Final Judgment requires Defendants to provide advance notification of certain future proposed acquisitions not otherwise subject to the Hart-Scott-Rodino Antitrust Improvements Act of 1976, 15 U.S.C. § 18a. Specifically, Defendants must provide at least thirty days advance written notice to the United States before Defendants acquire, directly or indirectly, any interest in any RMS business located within fifty miles of any

Iron Mountain RMS facility located in the geographic areas listed in Appendix C of the proposed Final Judgment where the business to be acquired generated at least \$1 million in revenues from RMS in the most recent completed calendar year. Section XI then provides for waiting periods and opportunities for the United States to obtain additional information similar to the provisions of the HSR Act before acquisitions in these geographic areas can be consummated.

The geographic areas listed in Appendix C include the fifteen geographic markets subject to divestitures as well as certain other metropolitan areas where Iron Mountain and Recall both provided RMS prior to the proposed acquisition. Although the United States did not believe that divestitures in these geographic areas were necessary, given the consolidation trends in the RMS industry, the United States sought to ensure that the Division had the opportunity to review future acquisitions in these areas so that it can seek effective relief, if necessary. The additional metropolitan areas covered by Section XI are: Phoenix, Arizona; Denver, Colorado; Jacksonville, Florida; Miami, Florida; Orlando, Florida; Minneapolis, Minnesota; St. Louis, Missouri; Las Vegas, Nevada; Cleveland, Ohio; Portland, Oregon; Dallas, Texas; and Houston, Texas.

#### **IV. REMEDIES AVAILABLE TO POTENTIAL PRIVATE LITIGANTS**

Section 4 of the Clayton Act, 15 U.S.C. § 15, provides that any person who has been injured as a result of conduct prohibited by the antitrust laws may bring suit in federal court to recover three times the damages the person has suffered, as well as costs and reasonable attorneys' fees. Entry of the proposed Final Judgment will neither impair nor assist the bringing of any private antitrust damage action. Under the provisions of Section 5(a) of the Clayton Act, 15 U.S.C. § 16(a), the proposed Final Judgment has no prima facie effect in any subsequent

private lawsuit that may be brought against Defendants.

**V. PROCEDURES AVAILABLE FOR MODIFICATION OF THE  
PROPOSED FINAL JUDGMENT**

The United States and Defendants have stipulated that the proposed Final Judgment may be entered by the Court after compliance with the provisions of the APPA, provided that the United States has not withdrawn its consent. The APPA conditions entry upon the Court's determination that the proposed Final Judgment is in the public interest.

The APPA provides a period of at least sixty days preceding the effective date of the proposed Final Judgment within which any person may submit to the United States written comments regarding the proposed Final Judgment. Any person who wishes to comment should do so within sixty days of the date of publication of this Competitive Impact Statement in the *Federal Register*, or the last date of publication in a newspaper of the summary of this Competitive Impact Statement, whichever is later. All comments received during this period will be considered by the United States Department of Justice, which remains free to withdraw its consent to the proposed Final Judgment at any time prior to the Court's entry of judgment. The comments and the response of the United States will be filed with the Court. In addition, comments will be posted on the U.S. Department of Justice, Antitrust Division's internet website and, under certain circumstances, published in the *Federal Register*.

Written comments should be submitted to:

Maribeth Petrizzi, Chief  
Litigation II Section  
Antitrust Division  
United States Department of Justice  
450 Fifth Street, NW, Suite 8700  
Washington, DC 20530

The proposed Final Judgment provides that the Court retains jurisdiction over this action, and the parties may apply to the Court for any order necessary or appropriate for the modification, interpretation, or enforcement of the Final Judgment.

## **VI. ALTERNATIVES TO THE PROPOSED FINAL JUDGMENT**

The United States considered, as an alternative to the proposed Final Judgment, a full trial on the merits against Defendants. The United States could have continued the litigation and sought preliminary and permanent injunctions against the proposed acquisition. The United States is satisfied, however, that the divestiture of assets described in the proposed Final Judgment will preserve competition for the provision of RMS in the relevant markets identified by the United States. Thus, the proposed Final Judgment would achieve all or substantially all of the relief the United States would have obtained through litigation, but avoids the time, expense, and uncertainty of a full trial on the merits of the Complaint.

## **VII. STANDARD OF REVIEW UNDER THE APPA FOR THE PROPOSED FINAL JUDGMENT**

The Clayton Act, as amended by the APPA, requires that proposed consent judgments in antitrust cases brought by the United States be subject to a sixty-day comment period, after which the Court shall determine whether entry of the proposed Final Judgment “is in the public interest.” 15 U.S.C. § 16(e)(1). In making that determination, the Court, in accordance with the statute as amended in 2004, is required to consider:

- (A) the competitive impact of such judgment, including termination of alleged violations, provisions for enforcement and modification, duration of relief sought, anticipated effects of alternative remedies actually considered, whether its terms are ambiguous, and any other competitive considerations bearing upon the adequacy of such judgment that the court deems necessary to a determination of whether the consent judgment is in the public interest; and

- (B) the impact of entry of such judgment upon competition in the relevant market or markets, upon the public generally and individuals alleging specific injury from the violations set forth in the complaint including consideration of the public benefit, if any, to be derived from a determination of the issues at trial.

15 U.S.C. § 16(e)(1)(A) & (B). In considering these statutory factors, the Court’s inquiry is necessarily a limited one as the government is entitled to “broad discretion to settle with the defendant within the reaches of the public interest.” *United States v. Microsoft Corp.*, 56 F.3d 1448, 1461 (D.C. Cir. 1995); *see generally United States v. SBC Commc’ns, Inc.*, 489 F. Supp. 2d 1 (D.D.C. 2007) (assessing public interest standard under the Tunney Act); *United States v. U.S. Airways Group, Inc.*, 38 F. Supp. 3d 69, 75 (D.D.C. 2014) (explaining that the “court’s inquiry is limited” in Tunney Act settlements); *United States v. InBev N.V./S.A.*, No. 08-1965 (JR), 2009-2 Trade Cas. (CCH) ¶ 76,736, 2009 U.S. Dist. LEXIS 84787, at \*3, (D.D.C. Aug. 11, 2009) (noting that the court’s review of a consent judgment is limited and only inquires “into whether the government’s determination that the proposed remedies will cure the antitrust violations alleged in the complaint was reasonable, and whether the mechanism to enforce the final judgment are clear and manageable.”).<sup>1</sup>

As the United States Court of Appeals for the District of Columbia Circuit has held, under the APPA a court considers, among other things, the relationship between the remedy secured and the specific allegations set forth in the government’s complaint, whether the decree is sufficiently clear, whether enforcement mechanisms are sufficient, and whether the decree may positively harm third parties. *See Microsoft*, 56 F.3d at 1458-62. With respect to the

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<sup>1</sup> The 2004 amendments substituted “shall” for “may” in directing relevant factors for courts to consider and amended the list of factors to focus on competitive considerations and to address potentially ambiguous judgment terms. *Compare* 15 U.S.C. § 16(e) (2004), *with* 15 U.S.C. § 16(e)(1) (2006); *see also SBC Commc’ns*, 489 F. Supp. 2d at 11 (concluding that the 2004 amendments “effected minimal changes” to Tunney Act review).

adequacy of the relief secured by the decree, a court may not “engage in an unrestricted evaluation of what relief would best serve the public.” *United States v. BNS, Inc.*, 858 F.2d 456, 462 (9th Cir. 1988) (quoting *United States v. Bechtel Corp.*, 648 F.2d 660, 666 (9th Cir. 1981)); *see also Microsoft*, 56 F.3d at 1460-62; *United States v. Alcoa, Inc.*, 152 F. Supp. 2d 37, 40 (D.D.C. 2001); *InBev*, 2009 U.S. Dist. LEXIS 84787, at \*3. Courts have held that:

[t]he balancing of competing social and political interests affected by a proposed antitrust consent decree must be left, in the first instance, to the discretion of the Attorney General. The court’s role in protecting the public interest is one of insuring that the government has not breached its duty to the public in consenting to the decree. The court is required to determine not whether a particular decree is the one that will best serve society, but whether the settlement is “*within the reaches of the public interest*.” More elaborate requirements might undermine the effectiveness of antitrust enforcement by consent decree.

*Bechtel*, 648 F.2d at 666 (emphasis added) (citations omitted).<sup>2</sup> In determining whether a proposed settlement is in the public interest, a district court “must accord deference to the government’s predictions about the efficacy of its remedies, and may not require that the remedies perfectly match the alleged violations.” *SBC Commc’ns*, 489 F. Supp. 2d at 17; *see also U.S. Airways*, 38 F. Supp. 3d at 75 (noting that a court should not reject the proposed remedies because it believes others are preferable); *Microsoft*, 56 F.3d at 1461 (noting the need for courts to be “deferential to the government’s predictions as to the effect of the proposed remedies”); *United States v. Archer-Daniels-Midland Co.*, 272 F. Supp. 2d 1, 6 (D.D.C. 2003) (noting that the court should grant due respect to the United States’ prediction as to the effect of proposed remedies, its perception of the market structure, and its views of the nature of the case).

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<sup>2</sup> Cf. *BNS*, 858 F.2d at 464 (holding that the court’s “ultimate authority under the [APPA] is limited to approving or disapproving the consent decree”); *United States v. Gillette Co.*, 406 F. Supp. 713, 716 (D. Mass. 1975) (noting that, in this way, the court is constrained to “look at the overall picture not hypercritically, nor with a microscope, but with an artist’s reducing glass”). *See generally Microsoft*, 56 F.3d at 1461 (discussing whether “the remedies [obtained in the decree are] so inconsonant with the allegations charged as to fall outside of the ‘reaches of the public interest’”).

Courts have greater flexibility in approving proposed consent decrees than in crafting their own decrees following a finding of liability in a litigated matter. “[A] proposed decree must be approved even if it falls short of the remedy the court would impose on its own, as long as it falls within the range of acceptability or is ‘within the reaches of public interest.’” *United States v. Am. Tel. & Tel. Co.*, 552 F. Supp. 131, 151 (D.D.C. 1982) (citations omitted) (quoting *United States v. Gillette Co.*, 406 F. Supp. 713, 716 (D. Mass. 1975)), *aff’d sub nom. Maryland v. United States*, 460 U.S. 1001 (1983); *see also U.S. Airways*, 38 F. Supp. 3d at 76 (noting that room must be made for the government to grant concessions in the negotiation process for settlements) (citing *Microsoft*, 56 F.3d at 1461); *United States v. Alcan Aluminum Ltd.*, 605 F. Supp. 619, 622 (W.D. Ky. 1985) (approving the consent decree even though the court would have imposed a greater remedy). To meet this standard, the United States “need only provide a factual basis for concluding that the settlements are reasonably adequate remedies for the alleged harms.” *SBC Commc’ns*, 489 F. Supp. 2d at 17.

Moreover, the Court’s role under the APPA is limited to reviewing the remedy in relationship to the violations that the United States has alleged in its Complaint, and does not authorize the Court to “construct [its] own hypothetical case and then evaluate the decree against that case.” *Microsoft*, 56 F.3d at 1459; *see also U.S. Airways*, 38 F. Supp. 3d at 75 (noting that the court must simply determine whether there is a factual foundation for the government’s decisions such that its conclusions regarding the proposed settlements are reasonable); *InBev*, 2009 U.S. Dist. LEXIS 84787, at \*20 (“the ‘public interest’ is not to be measured by comparing the violations alleged in the complaint against those the court believes could have, or even should have, been alleged”). Because the “court’s authority to review the decree depends

entirely on the government’s exercising its prosecutorial discretion by bringing a case in the first place,” it follows that “the court is only authorized to review the decree itself,” and not to “effectively redraft the complaint” to inquire into other matters that the United States did not pursue. *Microsoft*, 56 F.3d at 1459-60. As this Court confirmed in *SBC Communications*, courts “cannot look beyond the complaint in making the public interest determination unless the complaint is drafted so narrowly as to make a mockery of judicial power.” *SBC Commc’ns*, 489 F. Supp. 2d at 15.

In its 2004 amendments, Congress made clear its intent to preserve the practical benefits of utilizing consent decrees in antitrust enforcement, adding the unambiguous instruction that “[n]othing in this section shall be construed to require the court to conduct an evidentiary hearing or to require the court to permit anyone to intervene.” 15 U.S.C. § 16(e)(2); *see also U.S. Airways*, 38 F. Supp. 3d at 76 (indicating that a court is not required to hold an evidentiary hearing or to permit intervenors as part of its review under the Tunney Act). The language wrote into the statute what Congress intended when it enacted the Tunney Act in 1974, as Senator Tunney explained: “[t]he court is nowhere compelled to go to trial or to engage in extended proceedings which might have the effect of vitiating the benefits of prompt and less costly settlement through the consent decree process.” 119 Cong. Rec. 24,598 (1973) (statement of Sen. Tunney). Rather, the procedure for the public interest determination is left to the discretion of the Court, with the recognition that the Court’s “scope of review remains sharply proscribed by precedent and the nature of Tunney Act proceedings.” *SBC Commc’ns*, 489 F. Supp. 2d at 11.<sup>3</sup>

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<sup>3</sup> *See United States v. Enova Corp.*, 107 F. Supp. 2d 10, 17 (D.D.C. 2000) (noting that the “Tunney Act expressly allows the court to make its public interest determination on the basis of the competitive impact statement and response to comments alone”); *United States v. Mid-Am. Dairymen, Inc.*, No. 73-CV-681-W-1, 1977-1 Trade Cas. (CCH) ¶ 61,508, at 71,980, \*22 (W.D. Mo. 1977)

A court can make its public interest determination based on the competitive impact statement and response to public comments alone. *U.S. Airways*, 38 F. Supp. 3d at 76.

### **VIII. DETERMINATIVE DOCUMENTS**

There are no determinative materials or documents within the meaning of the APPA that were considered by the United States in formulating the proposed Final Judgment.

Dated: March 31, 2016

Respectfully submitted,

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/s/

Soyoung Choe  
U.S. Department of Justice, Antitrust Division  
Networks & Technology Enforcement Section  
450 Fifth Street, N.W., Suite 7100  
Washington, D.C. 20530  
Phone: (202) 598-2436  
Facsimile: (202) 616-8544  
E-mail: soyoung.choe@usdoj.gov

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(“Absent a showing of corrupt failure of the government to discharge its duty, the Court, in making its public interest finding, should . . . carefully consider the explanations of the government in the competitive impact statement and its responses to comments in order to determine whether those explanations are reasonable under the circumstances.”); S. Rep. No. 93-298, at 6 (1973) (“Where the public interest can be meaningfully evaluated simply on the basis of briefs and oral arguments, that is the approach that should be utilized.”).

**UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLUMBIA**

UNITED STATES OF AMERICA,

*Plaintiff,*

v.

IRON MOUNTAIN INC.,

and

RECALL HOLDINGS LTD.

*Defendants.*

CASE NO.: 1:16-cv-00595

JUDGE: Amit P. Mehta

FILED: 03/31/2016

**FINAL JUDGMENT**

WHEREAS, Plaintiff United States of America filed its Complaint on March 31, 2016, the United States and Defendants Iron Mountain Incorporated and Recall Holdings Limited, by their respective attorneys, have consented to the entry of this Final Judgment without trial or adjudication of any issue of fact or law, and without this Final Judgment constituting any evidence against or admission by any party regarding any issue of fact or law;

AND WHEREAS, Defendants agree to be bound by the provisions of this Final Judgment pending its approval by the Court;

AND WHEREAS, the essence of this Final Judgment is the prompt and certain divestiture of certain rights or assets by the Defendants to assure that competition is not substantially lessened;

AND WHEREAS, the United States requires Defendants to make certain divestitures for the purpose of remedying the loss of competition alleged in the Complaint;

AND WHEREAS, Defendants have represented to the United States that the divestitures required below can and will be made and that Defendants will later raise no claim of hardship or difficulty as grounds for asking the Court to modify any of the divestiture provisions contained below;

NOW THEREFORE, before any testimony is taken, without trial or adjudication of any issue of fact or law, and upon consent of the parties, it is ORDERED, ADJUDGED AND DECREED:

### **I. Jurisdiction**

This Court has jurisdiction over the subject matter of and each of the parties to this action. The Complaint states a claim upon which relief may be granted against Defendants under Section 7 of the Clayton Act, as amended (15 U.S.C. § 18).

### **II. Definitions**

As used in this Final Judgment:

A. “Acquirer” or “Acquirers” means the entity or entities to whom Defendants divest the Divestiture Assets.

B. “Acquirer of the Appendix A Divestiture Assets” means Access or another entity to which Defendants divest the Appendix A Divestiture Assets.

C. “Acquirer(s) of the Appendix B Divestiture Assets” means the entity or entities to which Defendants divest the Appendix B Divestiture Assets.

D. “Iron Mountain” means Defendant Iron Mountain Incorporated, a Delaware corporation with its headquarters in Boston, Massachusetts, its successors and assigns, and its

subsidiaries, divisions, groups, affiliates, partnerships and joint ventures, and their directors, officers, managers, agents, and employees.

E. “Recall” means Defendant Recall Holdings Limited, an Australian public company limited by shares and registered in New South Wales under Australian law, with its headquarters in Norcross, Georgia, its successors and assigns, and its subsidiaries, divisions, groups, affiliates, partnerships and joint ventures, and their directors, officers, managers, agents, and employees.

F. “Access” means Access CIG, LLC, a Delaware limited liability company headquartered in Livermore, California, its successors and assigns, and its subsidiaries, divisions, groups, affiliates, partnerships and joint ventures, and their directors, officers, managers, agents, and employees.

G. “Appendix A Divestiture Assets” means:

1. The Records Management facilities listed in Appendix A; and
2. All tangible and intangible assets used in the operation of the Records

Management businesses associated with the Records Management facilities listed in Appendix A, including, but not limited to:

a. All tangible assets, including fixed assets, vehicles, garages, capital equipment, personal property, inventory, office furniture, materials, supplies, and other tangible property, and all assets used in connection with the Records Management facilities listed in Appendix A; all licenses, permits and authorizations issued by any governmental organization relating to the Records Management facilities listed in Appendix A; all contracts, teaming arrangements, agreements, leases, commitments, certifications, and understandings relating to the Records Management facilities listed in Appendix A; all customer lists relating to the

Records Management facilities listed in Appendix A; all customer contracts, accounts, and credit records relating to the Records Management facilities listed in Appendix A (other than for Split Multi-City Customers who choose to remain with Defendants); and all repair and performance records and all other records relating to the Records Management facilities listed in Appendix A; and

b. All intangible assets used in the development, production, servicing and sale of the Records Management services associated with the Records Management facilities listed in Appendix A, including all patents, licenses and sublicenses, intellectual property, copyrights, service marks, service names, technical information, computer software and related documentation, know-how, trade secrets, drawings, blueprints, designs, design protocols, specifications for materials, specifications for parts and devices, safety procedures for the handling of materials and substances, quality assurance and control procedures, and all manuals and technical information Defendants provide to their own employees, customers, suppliers, agents or licensees relating to the Records Management facilities listed in Appendix A.

H. “Appendix B Divestiture Assets” means:

1. The Records Management facilities listed in Appendix B; and
2. All tangible and intangible assets used in the operation of the Records

Management businesses associated with the Records Management facilities listed in Appendix B, including, but not limited to:

a. All tangible assets, including fixed assets, vehicles, garages, capital equipment, personal property, inventory, office furniture, materials, supplies, and other tangible property, and all assets used in connection with the Records Management facilities listed in

Appendix B; all licenses, permits and authorizations issued by any governmental organization relating to the Records Management facilities listed in Appendix B; all contracts, teaming arrangements, agreements, leases, commitments, certifications, and understandings relating to the Records Management facilities listed in Appendix B; all customer lists relating to the Records Management facilities listed in Appendix B; all customer contracts, accounts, and credit records relating to the Records Management facilities listed in Appendix B (other than for Split Multi-City Customers who choose to remain with Defendants); and all repair and performance records and all other records relating to the Records Management facilities listed in Appendix B; and

b. All intangible assets used in the development, production, servicing and sale of the Records Management services associated with the Records Management facilities listed in Appendix B, including all patents, licenses and sublicenses, intellectual property, copyrights, service marks, service names, technical information, computer software and related documentation, know-how, trade secrets, drawings, blueprints, designs, design protocols, specifications for materials, specifications for parts and devices, safety procedures for the handling of materials and substances, quality assurance and control procedures, and all manuals and technical information Defendants provide to their own employees, customers, suppliers, agents or licensees relating to the Records Management facilities listed in Appendix B.

I. “Divestiture Assets” means the Appendix A Divestiture Assets and Appendix B Divestiture Assets.

J. “Divestiture Records Management Facilities” means the Records Management facilities listed in Appendices A and B.

K. “Records Management” means the storage and management of physical records and the provision of services relating to physical records, such as transporting and indexing records.

L. “Split Multi-City Customer” means a Recall customer that, as of the date of divestiture of a Divestiture Records Management Facility, has records stored at both the Divestiture Records Management Facility and one or more other Recall Records Management facilities that are to be retained by Defendants. A Split Multi-City Customer does not include a Recall customer that has separate contracts for each Recall facility in which it stores records.

### **III. Applicability**

A. This Final Judgment applies to Iron Mountain and Recall, as defined above, and all other persons in active concert or participation with any of them who receive actual notice of this Final Judgment by personal service or otherwise.

B. If, prior to complying with Sections IV and V of this Final Judgment, Defendants sell or otherwise dispose of all or substantially all of their assets or of lesser business units that include the Divestiture Assets, they shall require the purchaser to be bound by the provisions of this Final Judgment. Defendants need not obtain such an agreement from the Acquirers of the assets divested pursuant to this Final Judgment.

#### **IV. Divestitures**

A. Defendants are ordered and directed, within 10 calendar days after consummation of the transaction sought to be enjoined by the Complaint, to divest the Appendix A Divestiture Assets in a manner consistent with this Final Judgment to Access or another Acquirer of the Appendix A Divestiture Assets acceptable to the United States, in its sole discretion. The United States, in its sole discretion, may agree to one or more extensions of this time period not to exceed sixty (60) calendar days in total, and shall notify the Court in such circumstances. Defendants agree to use their best efforts to divest the Appendix A Divestiture Assets as expeditiously as possible.

B. Defendants are ordered and directed, within ninety (90) calendar days after consummation of the transaction sought to be enjoined by the Complaint, or five (5) calendar days after notice of the entry of this Final Judgment by the Court, whichever is later, to divest the Appendix B Divestiture Assets in a manner consistent with this Final Judgment to an Acquirer or Acquirer(s) of the Appendix B Divestiture Assets acceptable to the United States, in its sole discretion. The United States, in its sole discretion, may agree to one or more extensions of this time period not to exceed sixty (60) calendar days in total, and shall notify the Court in such circumstances. Defendants agree to use their best efforts to divest the Appendix B Divestiture Assets as expeditiously as possible.

C. In the event Defendants are attempting to divest the Appendix A Divestiture Assets to an Acquirer other than Access, and in accomplishing the divestiture of the Appendix B Divestiture Assets ordered by this Final Judgment, Defendants promptly shall make known, by usual and customary means, the availability of the Divestiture Assets. Defendants shall inform any person making an inquiry regarding a possible purchase of the Divestiture Assets that they

are being divested pursuant to this Final Judgment and provide that person with a copy of this Final Judgment. Defendants shall offer to furnish to all qualified prospective Acquirers, subject to customary confidentiality assurances, all information and documents relating to the Divestiture Assets customarily provided in a due diligence process except such information or documents subject to the attorney-client privilege or work-product doctrine. Defendants shall make available such information to the United States at the same time that such information is made available to any other person.

D. Defendants shall provide the Acquirer(s) and the United States information relating to the personnel involved in the operation and management of the Divestiture Assets or the sale of Records Management services provided from the Divestiture Assets to enable the Acquirer(s) to make offers of employment. Defendants will not interfere with any negotiations by the Acquirer(s) to employ any Defendant employee whose primary responsibility is the operation and management of the Divestiture Assets or the sale of Records Management services provided from the Divestiture Assets.

E. Defendants shall permit prospective Acquirers of the Divestiture Assets to have reasonable access to personnel and to make inspections of the physical facilities of the Divestiture Assets; access to any and all environmental, zoning, and other permit documents and information; and access to any and all financial, operational, or other documents and information customarily provided as part of a due diligence process.

F. Defendants shall warrant to the Acquirer(s) that the Divestiture Assets will be operational on the date of sale.

G. Defendants shall not take any action that will impede in any way the permitting, operation, or divestiture of the Divestiture Assets.

H. Defendants shall warrant to the Acquirer(s) that there are no material defects in the environmental, zoning or other permits pertaining to the operation of the Divestiture Assets, and that following the sale of the Divestiture Assets, Defendants will not undertake, directly or indirectly, any challenges to the environmental, zoning, or other permits relating to the operation of the Divestiture Assets.

I. At the option of the Acquirer(s), Defendants shall enter into a Transition Services Agreement for any services that are reasonably necessary for the Acquirer(s) to operate any of the Divestiture Records Management Facilities for a period of up to six (6) months. The United States, in its sole discretion, may approve one or more extensions of this agreement for a total of up to an additional six (6) months. Defendants shall perform all duties and provide all services required of Defendants under the Transition Services Agreement. The terms and conditions of any contractual arrangement meant to satisfy this provision must be reasonably related to market conditions. Any amendments, modifications or extensions of the Transition Services Agreement may only be entered into with the approval of the United States, in its sole discretion.

J. For a period of one (1) year from the date of the sale of any Divestiture Assets to an Acquirer, Defendants shall allow any Split Multi-City Customer to terminate or otherwise modify its contract with Recall so as to enable the Split Multi-City Customer to transfer some or all of its records to that Acquirer without penalty or delay and shall not enforce any contractual provision providing for permanent withdrawal fees, retrieval fees, or other fees associated with transferring such customer's records from a Recall Records Management facility to a facility operated by the Acquirer; except that if a Split Multi-City Customer requests that Defendants physically transport such records to the Acquirer, nothing in this Section IV.J prohibits Defendants from charging: (1) either the transportation fees listed in the Split Multi-City

Customer's contract with Recall or \$.30 per carton, whichever is less; or (2) either the re-filing fees listed in the Split Multi-City Customer's contract with Recall or \$.45 per carton, whichever is less, if the Split Multi-City Customer requests that Defendants handle the re-filing of the cartons at the Acquirer's facility.

K. Within five (5) business days of the date of the sale of the Divestiture Assets to an Acquirer, Defendants shall send a letter, in a form approved by the United States in its sole discretion, to all Split Multi-City Customers of the Divestiture Records Management Facilities acquired by that Acquirer notifying the recipients of the divestiture and providing a copy of this Final Judgment. Defendants shall provide the United States a copy of their letter at least five (5) business days before it is sent. The letter shall specifically advise customers of the rights provided under Section IV.J of this Final Judgment. The Acquirer shall have the option to include its own letter with Defendants' letter.

L. Unless the United States otherwise consents in writing, the divestiture pursuant to Section IV, or by Divestiture Trustee appointed pursuant to Section V, of this Final Judgment, (1) shall include the entire Divestiture Assets (unless the United States in its sole discretion approves the divestiture of a subset of the Divestiture Assets), and (2) shall be accomplished in such a way as to satisfy the United States, in its sole discretion, that the Divestiture Assets can and will be used by the Acquirer(s) as part of a viable, ongoing Records Management business. Divestiture of the Divestiture Assets may be made to one or more Acquirers provided that in each instance it is demonstrated to the sole satisfaction of the United States that the Divestiture Assets will remain viable and the divestiture of such assets will remedy the competitive harm alleged in the Complaint. The divestitures, whether pursuant to Section IV or Section V of this Final Judgment,

- (1) shall be made to an Acquirer(s) that, in the United States' sole judgment, has the intent and capability (including the necessary managerial, operational, technical and financial capability) of competing effectively in the records management business; and
- (2) shall be accomplished so as to satisfy the United States, in its sole discretion, that none of the terms of any agreement between an Acquirer(s) and Defendants give Defendants the ability unreasonably to raise the Acquirer's costs, to lower the Acquirer's efficiency, or otherwise to interfere in the ability of the Acquirer(s) to compete effectively.

## **V. Appointment of Divestiture Trustee**

A. If Defendants have not divested all of the Divestiture Assets within the time periods specified in Sections IV.A and IV.B, Defendants shall notify the United States of that fact in writing. Upon application of the United States, the Court shall appoint a Divestiture Trustee selected by the United States and approved by the Court to effect the divestiture of any remaining Divestiture Assets.

B. After the appointment of a Divestiture Trustee becomes effective, only the Divestiture Trustee shall have the right to sell the remaining Divestiture Assets. The Divestiture Trustee shall have the power and authority to accomplish the divestiture to an Acquirer(s) acceptable to the United States at such price and on such terms as are then obtainable upon reasonable effort by the Divestiture Trustee, subject to the provisions of Sections IV, V, and VI of this Final Judgment, and shall have such other powers as this Court deems appropriate. Subject to Section V.D of this Final Judgment, the Divestiture Trustee may hire at the cost and expense of Defendants any investment bankers, attorneys, or other agents, who shall be solely accountable to the Divestiture Trustee, reasonably necessary in the Divestiture Trustee's judgment to assist in the divestiture. Any such investment bankers, attorneys, or other agents shall serve on such terms and conditions as the United States approves including confidentiality requirements and conflict of interest certifications.

C. Defendants shall not object to a sale by the Divestiture Trustee on any ground other than the Divestiture Trustee's malfeasance. Any such objections by Defendants must be conveyed in writing to the United States and the Divestiture Trustee within ten (10) calendar days after the Divestiture Trustee has provided the notice required under Section VI.

D. The Divestiture Trustee shall serve at the cost and expense of Defendants pursuant to a written agreement, on such terms and conditions as the United States approves including confidentiality requirements and conflict of interest certifications. The Divestiture Trustee shall account for all monies derived from the sale of the assets sold by the Divestiture Trustee and all costs and expenses so incurred. After approval by the Court of the Divestiture Trustee's accounting, including fees for its services yet unpaid and those of any professionals and agents retained by the Divestiture Trustee, all remaining money shall be paid to Defendants and the trust shall then be terminated. The compensation of the Divestiture Trustee and any professionals and agents retained by the Divestiture Trustee shall be reasonable in light of the value of the Divestiture Assets to be sold by the Divestiture Trustee and based on a fee arrangement providing the Divestiture Trustee with an incentive based on the price and terms of the divestiture and the speed with which it is accomplished, but timeliness is paramount. If the Divestiture Trustee and Defendants are unable to reach agreement on the Divestiture Trustee's or any agents' or consultants' compensation or other terms and conditions of engagement within fourteen (14) calendar days of appointment of the Divestiture Trustee, the United States may, in its sole discretion, take appropriate action, including making a recommendation to the Court. The Divestiture Trustee shall, within three (3) business days of hiring any other professionals or

agents, provide written notice of such hiring and the rate of compensation to Defendants and the United States.

E. Defendants shall use their best efforts to assist the Divestiture Trustee in accomplishing the required divestiture. The Divestiture Trustee and any consultants, accountants, attorneys, and other agents retained by the Divestiture Trustee shall have full and complete access to the personnel, books, records, and facilities of the business to be divested, and Defendants shall develop financial and other information relevant to such business as the Divestiture Trustee may reasonably request, subject to reasonable protection for trade secret or other confidential research, development, or commercial information or any applicable privileges. Defendants shall take no action to interfere with or to impede the Divestiture Trustee's accomplishment of the divestiture.

F. After its appointment, the Divestiture Trustee shall file monthly reports with the United States and, as appropriate, the Court setting forth the Divestiture Trustee's efforts to accomplish the divestiture ordered under this Final Judgment. To the extent such reports contain information that the Divestiture Trustee deems confidential, such reports shall not be filed in the public docket of the Court. Such reports shall include the name, address, and telephone number of each person who, during the preceding month, made an offer to acquire, expressed an interest in acquiring, entered into negotiations to acquire, or was contacted or made an inquiry about acquiring, any interest in the Divestiture Assets, and shall describe in detail each contact with any such person. The Divestiture Trustee shall maintain full records of all efforts made to divest the Divestiture Assets.

G. If the Divestiture Trustee has not accomplished the divestiture ordered under this Final Judgment within six (6) months after its appointment, the Divestiture Trustee shall promptly file with the Court a report setting forth (1) the Divestiture Trustee's efforts to accomplish the required divestiture, (2) the reasons, in the Divestiture Trustee's judgment, why the required divestiture has not been accomplished, and (3) the Divestiture Trustee's recommendations. To the extent such reports contains information that the Divestiture Trustee deems confidential, such reports shall not be filed in the public docket of the Court. The Divestiture Trustee shall at the same time furnish such report to the United States which shall have the right to make additional recommendations consistent with the purpose of the trust. The Court thereafter shall enter such orders as it shall deem appropriate to carry out the purpose of the Final Judgment, which may, if necessary, include extending the trust and the term of the Divestiture Trustee's appointment by a period requested by the United States.

H. If the United States determines that the Divestiture Trustee has ceased to act or failed to act diligently or in a reasonably cost-effective manner, it may recommend the Court appoint a substitute Divestiture Trustee.

## **VI. Notice of Proposed Divestiture**

A. Within two (2) business days following execution of a definitive divestiture agreement, Defendants or the Divestiture Trustee, whichever is then responsible for effecting the divestiture required herein, shall notify the United States of any proposed divestiture required by Section IV or V of this Final Judgment. If the Divestiture Trustee is responsible, it shall similarly notify Defendants. The notice shall set forth the details of the proposed divestiture and list the name, address, and telephone number of each person not previously identified who

offered or expressed an interest in or desire to acquire any ownership interest in the Divestiture Assets, together with full details of the same.

B. Within fifteen (15) calendar days of receipt by the United States of such notice, the United States may request from Defendants, the proposed Acquirer(s), any other third party, or the Divestiture Trustee, if applicable, additional information concerning the proposed divestiture, the proposed Acquirer(s), and any other potential Acquirer. Defendants and the Divestiture Trustee shall furnish any additional information requested within fifteen (15) calendar days of the receipt of the request, unless the parties shall otherwise agree.

C. Within thirty (30) calendar days after receipt of the notice or within twenty (20) calendar days after the United States has been provided the additional information requested from Defendants, the proposed Acquirer(s), any third party, and the Divestiture Trustee, whichever is later, the United States shall provide written notice to Defendants and the Divestiture Trustee, if there is one, stating whether or not it objects to the proposed divestiture. If the United States provides written notice that it does not object, the divestiture may be consummated, subject only to Defendants' limited right to object to the sale under Section V.C of this Final Judgment. Absent written notice that the United States does not object to the proposed Acquirer(s) or upon objection by the United States, a divestiture proposed under Section IV or Section V shall not be consummated. Upon objection by Defendants under Section V.C, a divestiture proposed under Section V shall not be consummated unless approved by the Court.

**VII. Financing**

Defendants shall not finance all or any part of any purchase made pursuant to Section IV or V of this Final Judgment.

**VIII. Hold Separate**

Until the divestiture required by this Final Judgment has been accomplished, Defendants shall take all steps necessary to comply with the Hold Separate Stipulation and Order entered by this Court. Defendants shall take no action that would jeopardize the divestiture ordered by this Court.

**IX. Affidavits**

A. Within twenty (20) calendar days of the filing of the Complaint in this matter, and every thirty (30) calendar days thereafter until the divestiture has been completed under Section IV or V, Defendants shall deliver to the United States an affidavit as to the fact and manner of its compliance with Section IV or V of this Final Judgment. Each such affidavit shall include the name, address, and telephone number of each person who, during the preceding thirty (30) calendar days, made an offer to acquire, expressed an interest in acquiring, entered into negotiations to acquire, or was contacted or made an inquiry about acquiring, any interest in the Divestiture Assets, and shall describe in detail each contact with any such person during that period. Each such affidavit shall also include a description of the efforts Defendants have taken to solicit buyers for the Divestiture Assets, and to provide required information to prospective Acquirers, including the limitations, if any, on such information. Assuming the information set forth in the affidavit is true and complete, any objection by the United States to information

provided by Defendants, including limitation on information, shall be made within fourteen (14) calendar days of receipt of such affidavit.

B. Within twenty (20) calendar days of the filing of the Complaint in this matter, Defendants shall deliver to the United States an affidavit that describes in reasonable detail all actions Defendants have taken and all steps Defendants have implemented on an ongoing basis to comply with Section VIII of this Final Judgment. Defendants shall deliver to the United States an affidavit describing any changes to the efforts and actions outlined in Defendants' earlier affidavits filed pursuant to this section within fifteen (15) calendar days after the change is implemented.

C. Defendants shall keep all records of all efforts made to preserve and divest the Divestiture Assets until one year after such divestiture has been completed.

#### **X. Compliance Inspection**

A. For the purposes of determining or securing compliance with this Final Judgment, or of any related orders such as any Hold Separate Stipulation and Order, or of determining whether the Final Judgment should be modified or vacated, and subject to any legally recognized privilege, from time to time authorized representatives of the United States Department of Justice, including consultants and other persons retained by the United States, shall, upon written request of an authorized representative of the Assistant Attorney General in charge of the Antitrust Division, and on reasonable notice to Defendants, be permitted:

- (1) access during Defendants' office hours to inspect and copy, or at the option of the United States, to require Defendants to provide hard copy or electronic copies of, all books, ledgers, accounts, records, data, and

documents in the possession, custody, or control of Defendants, relating to any matters contained in this Final Judgment; and

- (2) to interview, either informally or on the record, Defendants' officers, employees, or agents, who may have their individual counsel present, regarding such matters. The interviews shall be subject to the reasonable convenience of the interviewee and without restraint or interference by Defendants.

B. Upon the written request of an authorized representative of the Assistant Attorney General in charge of the Antitrust Division, Defendants shall submit written reports or response to written interrogatories, under oath if requested, relating to any of the matters contained in this Final Judgment as may be requested.

C. No information or documents obtained by the means provided in this section shall be divulged by the United States to any person other than an authorized representative of the executive branch of the United States, except in the course of legal proceedings to which the United States is a party (including grand jury proceedings), or for the purpose of securing compliance with this Final Judgment, or as otherwise required by law.

D. If at the time information or documents are furnished by Defendants to the United States, Defendants represent and identify in writing the material in any such information or documents to which a claim of protection may be asserted under Rule 26(c)(1)(G) of the Federal Rules of Civil Procedure, and Defendants mark each pertinent page of such material, "Subject to claim of protection under Rule 26(c)(1)(G) of the Federal Rules of Civil Procedure," then the

United States shall give Defendants ten (10) calendar days notice prior to divulging such material in any legal proceeding (other than a grand jury proceeding).

## **XI. Notification**

A. Unless such transaction is otherwise subject to the reporting and waiting period requirements of the Hart-Scott-Rodino Antitrust Improvements Act of 1976, as amended, 15 U.S.C. § 18a (the “HSR Act”), Defendants, without providing advance notification to DOJ, shall not directly or indirectly acquire any assets of or any interest, including any financial, security, loan, equity or management interest, in any Records Management business located within a fifty (50) mile radius of any Iron Mountain Records Management facility in the metropolitan statistical areas associated with the cities listed in Appendix C during the term of this Final Judgment; provided that notification pursuant to this Section shall not be required where the assets or interest being acquired generated less than \$1 million in revenue from Records Management services in the most recent completed calendar year.

B. Such notification shall be provided to the DOJ in the same format as, and per the instructions relating to the Notification and Report Form set forth in the Appendix to Part 803 of Title 16 of the Code of Federal Regulations as amended, except that the information requested in Items 5 through 8 of the instructions must be provided only about Records Management. Notification shall be provided at least thirty (30) calendar days prior to acquiring any such interest, and shall include, beyond what may be required by the applicable instructions, the names of the principal representatives of the parties to the agreement who negotiated the agreement, and any management or strategic plans discussing the proposed transaction. If within the 30-day period after notification, representatives of the Antitrust Division make a written

request for additional information, Defendants shall not consummate the proposed transaction or agreement until thirty (30) calendar days after submitting all such additional information. Early termination of the waiting periods in this paragraph may be requested and, where appropriate, granted in the same manner as is applicable under the requirements and provisions of the HSR Act and rules promulgated thereunder. This Section shall be broadly construed and any ambiguity or uncertainty regarding the filing of notice under this Section shall be resolved in favor of filing notice.

#### **XII. No Reacquisition**

Defendants may not reacquire any part of the Divestiture Assets during the term of this Final Judgment.

#### **XIII. Retention of Jurisdiction**

This Court retains jurisdiction to enable any party to this Final Judgment to apply to this Court at any time for further orders and directions as may be necessary or appropriate to carry out or construe this Final Judgment, to modify any of its provisions, to enforce compliance, and to punish violations of its provisions.

#### **XIV. Expiration of Final Judgment**

Unless this Court grants an extension, this Final Judgment shall expire ten (10) years from the date of its entry.

#### **XV. Public Interest Determination**

Entry of this Final Judgment is in the public interest. The parties have complied with the requirements of the Antitrust Procedures and Penalties Act, 15 U.S.C. § 16, including making copies available to the public of this Final Judgment, the Competitive Impact Statement, and any

comments thereon and the United States' responses to comments. Based upon the record before the Court, which includes the Competitive Impact Statement and any comments and response to comments filed with the Court, entry of this Final Judgment is in the public interest.

Date: \_\_\_\_\_

Court approval subject to procedures of Antitrust Procedures and Penalties Act, 15 U.S.C. § 16

\_\_\_\_\_

United States District Judge

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